United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

ORIGINAL

74-1432

To be argued by
MICHAEL J. MURPHY

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P/S

United States Court of Appeals

For the Second Circuit

STERLING NATIONAL BANK AND
TRUST CO. OF NEW YORK,
Plaintiff-Appellee,

against

FIDELITY MORTGAGE INVESTORS,
Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York

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DEFENDANT-APPELLANT'S REPLY BRIEF

LORD, DAY & LORD
Attorneys for Defendant-Appellant
25 Broadway
New York, New York 10004
(212) 344-8480

MICHAEL J. MURPHY
B. SCOTT GREATHEAD
Of Counsel

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DEFENDANT-APPELLANT'S REPLY BRIEF

Introduction

This reply brief is submitted on behalf of appellant Fidelity Mortgage Investors in response to points raised in the appellee's brief opposing the appeal herein.

POINT I

In personam jurisdiction does not exist over Fidelity in this action.

Sterling's brief reasserts its contention below that "the borrowing of money from a New York bank constitutes the transaction of business in New York for the purpose of subjecting the borrower to *in personam* jurisdiction of the New York courts." (Appellee's brief at 14). Yet Sterling's brief fails to cite a single authority which supports this unprecedented expansion of New York's long-arm jurisdiction.*

For instance, Sterling's brief at page 5 contains a conclusory and irrelevant discussion of the Supreme Court's decisions in *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945), and *McGee* v. *International Life Insurance Co.,* 335 U.S. 220 (1957), two cases which describe the outer limits of a constitutionally permissible exercise of state long-arm jurisdiction. But neither case involves a factual situation even remotely analogous to the instant case, and this Court, among others, has repeatedly recognized that C.P.L.R. §302(a)(1) has never been read to extend New York's jurisdiction over non-residents as far as the United States Constitution might allow. *Liquid Carriers Corp.* v. *American Marine Corp.,* 275 F.2d 951, 955 (2d Cir. 1967); *United States* v. *Montreal Trust Co.,* 358 F.2d 239, 242 (2d Cir. 1966). *See, also, Millner Co.* v. *Noudar, Lda.,* 24 A.D.2d 326, 329, 266 N.Y.S.2d 289, 292 (1st Dep't 1966).

* Although appellee attempts to gain some mileage from the inadvertent omission of the word "any" from the recitation of the text of C.P.L.R. §302(a)(1) in Fidelity's main brief, we fail to see how this adds any substance to Sterling's unsupported conclusion that Fidelity is subject to *in personam* jurisdiction in this action.

Moreover, even if New York's long-arm jurisdiction extended as far as constitutionally permissible, the imposition of *in personam* jurisdiction over a non-resident who, in a foreign jurisdiction, merely accepts an offer of a loan from a New York bank, solicited from New York by mail or telephone, would violate the constitutional standard enunciated by the Supreme Court in *International Shoe,* requiring "certain minimum contacts with [the forum], such that the maintenance of [the] suit does not offend the traditional notions of fair play and substantial justice." 326 U.S. at 316.

A. Appellee ignores the fact that the loan agreement was made in Florida, not New York.

The appellee's ingenuous attempt to "wish away" the holding in *Hubbard, Westervelt & Mottelay, Inc.* v. *Harsh Building Co.,* 28 A.D.2d 295, 284 N.Y.S.2d 879 (1st Dep't 1967) by describing the First Department's opinion as "a poorly reasoned decision" (appellee's brief at 11) only emphasizes the lack of substance to Sterling's arguments. Appellee also attempts to distinguish the *Hubbard* case on the same ground that it was distinguished in *Carrolton Associates* v. *Abrams,* 57 Misc.2d 617, 293 N.Y.S.2d 159 (Sup.Ct. 1968). (Appellee's brief at 11). However, appellee ignores the fact that the *Carrolton* court's reasoning in distinguishing *Hubbard* would also distinguish the instant suit.*

* As discussed at pages 15 and 16 of appellant's main brief, the note involved in the *Hubbard* case was given for services rendered by the plaintiff in obtaining a mortgage commitment from a bank, located in New York, to finance the purchase and development of property in Arizona. If *Hubbard* is distinguishable from the instant case, it is because the defendant there had *greater* contacts with New York than Fidelity.

The *Carrolton* case was an action by landlords to recover rents under an alleged oral contract which was negotiated and agreed to by the defendants, who represented concessionaires of a bankrupt corporation which operated shopping centers and discount stores. The court sustained jurisdiction under C.P.L.R. §302(a)(1) over certain non-resident defendants who were present in New York during the negotiations and at the time of the alleged oral agreement, on the ground that "the contract (1) was negotiated and (2) was agreed to, and (3) was to be performed —all in New York." 57 Misc.2d at 625. The *Hubbard* case was distinguished in *Carrolton* on the ground that the instrument in *Hubbard* was executed and delivered in Arizona. Similarly, the note in question in the instant suit was executed and placed in the mail by Fidelity in Florida.

Significantly, the *Carrolton* court refused to assert jurisdiction under C.P.L.R. §302(a)(1) over a non-resident defendant who was not present in New York when the negotiations were conducted or the agreement was made, on the ground that his only possible involvement was from outside New York:

> "There is no proof that he was in New York at any time in connection with the transactions involved herein. . . . If he participated at all, in that aspect or in the later conferences, negotiations and alleged oral agreements, it was by way of long distance and not presence." 57 Misc.2d at 627.

Similarly, Fidelity's agreement to make the note in question was by way of long distance and not presence in New York. The offer of the loan in question was made

by telephone from New York to Fidelity in Florida. Fidelity accepted the offer by drawing and executing the note in Florida and mailing it to Sterling in New York. (See appellant's main brief at 8). It is hornbook law that in such a situation the contract is made at the time and place that an acceptance by mail is posted:

> ". . . [I]t is now the prevailing rule that the offeree has power to accept and close the contract by mailing a letter of acceptance. . . . The contract is regarded as made at the time and place that the letter of acceptance is put into the possession of the post office department." 1 Corbin, *Contracts* §78, at 333 (1963).

See, also, 1 Jaeger, *Williston on Contracts* §81, at 266-67 (3rd ed. 1957); *Burton* v. *United States,* 202 U.S. 344, 384-86 (1906); *United States* v. *Bushwick Mills, Inc.,* 165 F.2d 198, 202 (2d Cir. 1947); *Greenberg* v. *R.S.P. Realty Corp.,* 22 A.D.2d 690, 253 N.Y.S.2d 344 (2d Dep't 1964).

Thus, the loan agreement embodied by the note in question was unquestionably made in Florida, not in New York.

B. None of the cases cited by appellee is authority for the imposition of *in personam* jurisdiction over Fidelity.

In support of the statement at page 6 of Sterling's brief that "the note being payable in New York, the default gives rise to a cause of action arising from the transaction of business within New York," the appellee cites *Benedict Corp.* v. *Epstein,* 47 Misc.2d 316, 262 N.Y.S.2d 726 (Sup.Ct. 1965). Whatever the applicability to the instant case of this decision by the Supreme Court of Albany County, in *Hubbard Westervelt & Mottelay, Inc.* v. *Harsh*

Building Co., 28 A.D.2d 295, 284 N.Y.S.2d 879 (1st Dep't 1967), the Appellate Division's First Department rejected the *Benedict* case as precedent, stating that "this decision is not supported by the weight of authority." 28 A.D.2d at 298.

Sterling's brief goes on to assert that the court in *Millner Co.* v. *Noudar, Lda.*, 24 A.D.2d 326, 266 N.Y.S.2d 289 (1st Dep't 1966), "said that if the defendant maintained a bank account in New York as the plaintiff contended that would be ground for assumption of jurisdiction under CPLR §302(a)(1)." (Appellee's brief at 8). On the contrary, the facts and the holding in the *Millner* case indicate that a far greater number of contacts than those alleged by Sterling are necessary to impose long-arm jurisdiction over a non-resident.

The *Millner* case was an action to recover damages for an alleged breach of contract by the defendant, a Portuguese corporation. The defendant had made the offer of the contract by letter sent from Portugal to the plaintiff in New York City, offering to make the plaintiff its sole representative for the sale of its olives and other food products in the United States and Canada. The plaintiff accepted the offer by letter mailed to the defendant from New York to Portugal. The plaintiff sold between $300,000 and $500,000 worth of defendant's products annually in the United States and Canada, and on some occasions officers of the defendant came to New York and with plaintiff's president engaged in sales and transactions of business on behalf of the defendant. The plaintiff sought to assert jurisdiction over the defendant on the basis of C.P.L.R. §302(a)(1).

The court recognized that two questions were presented in determining whether long-arm jurisdiction existed over the defendant:

> "We must consider . . . (1) whether the mere mailing of the contract offered by the defendant to the plaintiff . . . constituted a sufficient act of business to subject it to the jurisdiction of our courts under CPLR 302(a), subd. 1, and, if not, (2) whether there is evidence of sufficient additional acts by the defendant in New York pursuant to said contract to subject the defendant to the jurisdiction of our courts." 24 A.D.2d at 329.

As to the first question, the court held that with the single exception of insurance contracts (for which long-arm jurisdiction is imposed on non-resident offerors through §59-a of the Insurance Law), long-arm jurisdiction under C P.L.R. §302(a)(1) does not extend to non-residents who merely mail a contract offer into the State which is accepted in New York by a New York resident. 24 A.D.2d at 330. Moreover, the court also observed that,

> "[T]he acceptance of this contract by the plaintiff in New York was not an act of the defendant here. . . . [I]t is not significant that plaintiff mailed its acceptance from New York, nor that this writing, by the terms of the offer may not have become a formal acceptance until its receipt by defendant in Lisbon." 24 A.D.2d at 329.

This holding, of course, completely contradicts Sterling's assertion (at pages 7 and 13 of its brief) that Fidelity's act of mailing the note in Florida to Sterling in New York of itself subjected Fidelity to *in personam* jurisdiction in New York. If Fidelity, rather than Sterling,

had made the offer of the loan agreement by mail to New York, the *Millner* case indicates that neither this act, nor Sterling's acceptance in New York, would have constituted the transaction of business in New York by Fidelity. Consequently, Fidelity's acceptance *in Florida* of Sterling's offer of a loan agreement could not possibly have constituted the transaction of business in New York.

The *Millner* court went on to hold that the defendant could be subject to long-arm jurisdiction, not merely because it maintained funds in New York (as appellee asserts on page 8 of its brief), but because it also stored large quantities of merchandise in the State in connection with the contract in suit:

> "The plaintiff asserts . . . that the defendant maintained funds in New York and stored substantial quantities of goods and merchandise here, thus submitting itself to the protection of our laws. If that be true, and if the goods and merchandise were stored in connection with the contract in suit, that would afford ground for assumption of jurisdiction under C.P.L.R. 302(a), subd. 1." 24 A.D.2d at 330-31.

The contacts alleged by the plaintiff in *Millner* obviously go far beyond those alleged by Sterling in the instant suit.

Appellee relies upon *Lewis and Eugenia Van Wezel Foundation, Inc.* v. *Guerdon Industries, Inc.*, 450 F.2d 1264 (2d Cir. 1971), reversing 330 F. Supp. 1349 (S.D.N.Y. 1971), to support the statement that "the borrowing of money from a New York bank constitutes the transaction of business within the state for the purpose of subjecting the borrower to *in personam* jurisdiction of the New York

courts." (Appellee's brief at 6). Not only do the facts of the *Guerdon* case fail to support appellee's interpretation of the reach of New York's long-arm statute, but they present a situation which is easily distinguishable from the instant case.

The *Guerdon* case was an action on a number of notes issued by the defendant corporation as replacement for cancelled notes. The original notes, which were payable in New York, were signed in New York on behalf of Trailer Homes, a predecessor corporation of the defendant, by representatives of Trailer Homes who operated out of a New York office. In an opinion by Judge Tyler, the District Court found that, while the replacement notes were also payable in New York, the plaintiffs had failed to prove that they were signed in New York, and dismissed the complaint for lack of jurisdiction on this ground:

> "The only certain contact in New York in regard to the replacement notes here in suit is the conceded fact that these notes are payable in New York. To date, however, the New York courts have rejected the view that demand obligations which are payable in New York without more are sufficient to establish jurisdiction. *Wirth* v. *Prenyl S.A.*, 29 A.D.2d 373, 288 N.Y.S. 2d 377 (1st Dep't 1968); *Hubbard, Westervelt & Mottelay, Inc.* v. *Harsh Building Co.*, 28 A.D.2d 295, 284 N.Y.S.2d 879 (1st Dep't 1967). . . . [I]t seems that the essential facts amount to no more than that the notes were made outside of New York and mailed to the payee's agent here and of course are payable in New York. As indicated, the New York courts do not regard these contacts sufficient to confer jurisdiction." 330 F.Supp. at 1352.

While this Court reversed the dismissal, it significantly did not find error in Judge Tyler's holding on this point. Rather, this Court reversed Judge Tyler on the ground that he had failed to look to the original notes in order to determine jurisdiction:

> "The transaction of business in this case was the borrowing of money. This clearly took place in New York, and the fact that the original notes are embodied in new pieces of paper, signed outside of the State, does not deprive the New York courts of jurisdiction." 450 F.2d at 1267.

Obviously, the holding of this Court in the *Guerdon* case, based on these particular facts, has absolutely no application to the instant action. The note upon which this action is based was not a replacement note representing an obligation originally incurred in New York. Rather, as pointed out above, Sterling's offer of the loan in question by telephone to Fidelity in Florida, was accepted in Florida upon mailing the completed loan forms to New York. As such, the obligation was incurred in Florida. As Judge Tyler correctly noted in his *Guerdon* opinion, and this Court did not dispute, a non-resident is not subject to long-arm jurisdiction merely because the note is payable in New York.

Similar to this Court's holding in the *Guerdon* case, and equally inapplicable to the instant suit, is the holding in *Pacer International Corp.* v. *Otter Distribution Co., Inc.*, 51 Misc.2d 737, 273 N.Y.S.2d 829 (Sup.Ct. 1966), cited at page 7 of appellee's brief. The *Pacer* case was an action on a guaranty contract executed by a non-resident defendant. The guaranty was executed in New York by

the defendant on the same day that the guaranteed contract was executed in New York. It was argued that the non-resident defendant was not subject to long-arm jurisdiction in New York because the guaranteed contract was later assigned by an instrument executed in Pennsylvania. The court, noting that the assignment expressly provided that the guaranty "shall continue", held that the fact that the assignment was executed in Pennsylvania "does not alter the fact that the foundation of the suit against [the non-resident defendant] is the guaranty he executed in this State." 51 Misc.2d at 738.

No more applicable to the facts of the instant case than the *Pacer* and *Guerdon* cases is *Gotham Life, Inc.* v. *Ramey,* 359 F. Supp. 134 (D.D.C. 1973), cited at page 7 of appellee's brief. The *Gotham Life* case was an action on a surety endorsement executed in New York on a series of promissory notes issued by a corporation, of which the defendant was a principal officer, in connection with a contract executed in New York for the purchase of a New York publication. This case is hardly analogous to the case at hand.

Appellee also strains to find support for its contention that Fidelity is subject to long-arm jurisdiction from the opinion in *Francis I. DuPont & Co.* v. *Chelednik,* 69 Misc. 2d 362, 330 N.Y.S. 2d 149 (Sup. Ct., App. T., 1971). The plaintiff in that case was a stock-brokerage firm with offices in Manhattan. The defendant, a resident of New Jersey, was one of plaintiff's customers and traded on New York stock exchanges through the plaintiff. The plaintiff erroneously placed certain securities not belonging to the defendant in the defendant's account. The de-

fendant, with knowledge of the mistake, did not notify the plaintiff of the error, and a few months later directed the plaintiff to sell the securities for his account. The plaintiff did so, forwarded to the defendant a check for the proceeds, and upon discovering the error some months later, demanded the money back. This action was instituted when the defendant refused to return the money. Not surprisingly, the Appellate Term found that long-arm jurisdiction under C.P.L.R. §302 extended to the defendant on the ground that he had committed a tortious act within the State, and also because the operation of the brokerage account in New York constituted the transaction of business within the State. Plainly, this holding has absolutely no application to the instant case.

Finally, at page 12 of its brief, appellee seeks to find support for his contentions in Judge Lasker's recent decision in *National Bank of North America* v. *Bennett*, —— F.Supp. —— (S.D.N.Y., 71 Civ. 2021, decided May 23, 1974). That case was an action on two loans by a New York bank to a Massachusetts couple, Mr. and Mrs. Bennett, which were collateralized by securities purchased with the proceeds of the loans through a New York stockbroker. Mr. Bennett came into New York on various occasions to conduct preliminary negotiations for the loans, and after the loans became due, to discuss a repayment program. The defendants challenged jurisdiction under C.P.L.R. §302(a)(1) on the ground that the loans were signed in Massachusetts.

Judge Lasker's opinion, sustaining jurisdiction, relied heavily on two facts which are *not* present in the instant

case: (1) negotiations relating to the loans in question took place in New York; and (2) the loans were collateralized by securities purchased in New York with the proceeds of the loans. See memorandum opinion at 5-6. Even so, Judge Lasker observed that "it is a close question" whether the necessary standard under C.P.L.R. §302(a)(1) had been met. Memorandum opinion at 3.

If the facts present in the *Bennett* case presented a "close question" as to whether jurisdiction existed under C.P.L.R. §302(a)(1), there can be no question that *in personam* jurisdiction does not exist over Fidelity under the facts of the instant case.

POINT II

There is a genuine issue of fact as to the alteration defense.

Stripped of its rhetoric, Sterling's argument in Point II of its brief is basically twofold:

(a) the entry of the note was a mere marginal memorandum which reflected the bargain of the parties; accordingly, it cannot be a "material" alteration;

(b) in any event, as a matter of law there was no fraudulent intent.

We treat each of these issues in the above order of presentation.

A. Materiality

Sterling argues that the entry was made, consistent with traditional banking practice,* as a mere memorandum or record of the bargain between the parties embodied by the note. Therefore, reasons Sterling, the contract was not changed and there could be no material alteration. As pointed out in our main brief (at pages 28-30), for the purposes of this appeal we assume *arguendo* that the entry was made as a matter of record-keeping routine. Nevertheless, the issue of fact, we submit, remains.

1. If we read Sterling's brief correctly, it takes the position that the parties agreed that post-maturity interest would accrue at the rate of 9¼ even though the instrument contains no such term. Ergo, according to Sterling, the alteration may not be considered material since it did not change the bargain of the parties. In Sterling's words:

> "The defendant had agreed to the 9¼% rate and had in fact confirmed it in writing . . ." (Appellee's brief at 14-15)
>
> * * *
>
> "Surely the defendant did not expect that if it defaulted there would be no interest or that its default would benefit it with a lower rate of interest." (*Id.* at 15)
>
> * * *
>
> "Furthermore, there never was any alteration of the note since the notations were not changes but evidenced the agreement of the parties." (*Id.* at 18)

With deference, we submit this reasoning misses the point.

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* Sterling does not suggest that the utilization of the entry on the default application was a traditional banking practice.

In the first instance, there is no evidence in the record to suggest that Fidelity agreed to the accrual of post-maturity interest at any rate. Indeed, the evidence is just the opposite. The affidavit of Mr. Fitzpatrick states unambiguously:

> "There was never any agreement, indeed, any discussion of obligating Fidelity to pay interest (of any amount) on the note in the event it was not paid off by the maturity date." (App. 72a, 76a)

The so-called written confirmation relied upon by Sterling (appellee's brief at 15), which appears on page 61a of the Appendix, is not to the contrary. That document merely confirms that the discount rate of the note was to be 9¼% for the stated term of the note (August 17, 1973-November 7, 1973). It is not confirmation of any obligation to pay that rate of interest beyond the term of the note.*

To the extent that Sterling insists that the bargain of the parties included an agreement that post-maturity interest would accrue at 9¼% (and therefore the use of the entry did not materially change the contract embodied by the note), there is, at the very least, a question of fact.

2. It is possible that the above analysis misconstrues Sterling's position. It may be that it is taking the position that the so-called innocent, routine entry was merely for the purpose of recording the discount rate for the

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* On page 19 of its brief, Sterling argues that the imposition of a 9¼% post-maturity rate could not change the contract of the parties if there had been no agreement as to the accrual of that interest. This, of course, is patent nonsense. The contract that was altered by the use of the alteration is that embodied in the note. That contract called for the payment of $2 million on November 7, 1973. It was completely silent as to the accrual of any interest pre- or post-maturity. Obviously, a term which obligates Fidelity to pay post-maturity interest at 9¼% changes that contract.

stated term of the note. According to this reasoning, the entry *when made* did not change the contract of the parties and it could not, therefore, be considered a material alteration.

Assuming this is Sterling's position, the result, we submit, would be the same, for it completely ignores the fact that the entry was subsequently used, on the default judgment application, in an attempt to change that contract. As pointed out in our main brief (pages 28-30), a marginal notation will be considered a material alteration if there is an intent to have it reflect a new term to the agreement embodied in the instrument. Assuming *arguendo* in the instant case, that that intention did not exist at the time the entry was made, it obviously existed at the time of the default application.

We are aware of no authority, nor logic, which sets forth a rule that a marginal notation will only be considered a material alteration if the requisite intention to change the contract exists *at the time* the entry was made; as opposed to the time the holder of the note attempted to enforce the instrument. Indeed, if the law were as Sterling suggests, an innocently altered instrument could subsequently be intentionally negotiated as altered with impunity. This cannot be the state of the law.

B. Is there an issue of fact as to fraudulent intent?

As to this issue Sterling argues (i) that the entry was made in a routine record-keeping manner by a bank clerk who did not intend to deceive anybody (appellee's brief at 17), and (ii) that the use of the entry on the default judgment application only reflected its understanding of the rate which the bank records showed (*id.* at 15).

1. Once again, for the purposes of this appeal, we assume *arguendo* that the entry was made innocently as the Grosso affidavit suggests. This, however, does not mean that the issue of fact as to fraudulent intent disappears from the case; far from it. The authorities cited in our main brief make clear that where one seeks to fraudulently enforce an altered instrument, it adopts the alteration (appellant's brief at 31-33). It is enough that the requisite intent be present at the time enforcement is sought. This brings us to the second leg of Sterling's argument on the issue of intent.

2. Sterling argues that its use of the alteration on the default judgment application was only a reflection of its understanding of the "rate which the bank records showed." (Appellee's brief at 15).

Unfortunately this position raises more questions than it answers, for it completely ignores the three default judgments secured in the State court (App. at 89a-106a). Significantly, Sterling's brief makes no reference to them. Yet, the fact is that all three of these cases involved non-interest bearing discounted notes, as the instant case does.* In all three cases, Sterling received post-maturity interest, on papers prepared by Sterling, not at the discounted rate of the note but rather at the substantially lower rate mandated by statute (App. at 90a-91a). This was the case even though the bank files in all three cases (as in this action) presumably showed what the discounted rate of

* On page 17 of its brief, Sterling seems to make the argument that the note was an interest bearing instrument. According to this theory, if Sterling had negotiated the note to a third party, that third party could have sought the principal amount plus 9¼% interest for the entire term from Fidelity. The fact is, of course, that the instrument is a non-interest bearing negotiable note (App. at 64a-65a).

each note was. Why, then, did Sterling treat the instant action differently?

The fact of the matter is that this case presents, at the very least, a genuine issue of fact as to intent. Fidelity has a right to have that issue of fact litigated. The issue before this Court is not whether or not the requisite fraudulent intent was present, but rather whether or not there is a genuine issue of fact as to the existence of that intent. We submit that, at the very least, the facts surrounding the three State court cases reflected in the record require a conclusion that that issue of fact does indeed exist.

Conclusion

For the reasons stated above, as well as those stated in Fidelity's main brief, it is respectfully submitted that the judgment entered below should be vacated. The District Court should be directed to dismiss the action for lack of *in personam* jurisdiction. Alternatively, the entry of summary judgment should be vacated on the grounds that triable issues of fact exist as the jurisdictional and alteration defenses. Additionally, Fidelity should be granted its costs, and such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

LORD, DAY & LORD

By /s/ MICHAEL J. MURPHY

MICHAEL J. MURPHY
Attorneys for Defendant-Appellant

MICHAEL J. MURPHY
R. SCOTT GREATHEAD
Of Counsel

July 2, 1974

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 74-1432

STERLING NATIONAL BANK &
TRUST CO. OF NEW YORK

Plaintiff
Appellee

against

FIDELITY MORTGAGE
INVESTORS

Defendant
Appellant

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 36-16 24th Street, Queens, New York.

That on July 2 *19*74 *deponent served the annexed* Reply Brief

on Hary Gurahain, Esq.
attorney(s) for Plaintiff--Appellee
in this action at 540 Madison Avenue, New York, New York
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in ~~a post office~~ official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me
July 2, 1974
Jacob I. Friedman

JACOB I. FRIEDMAN
NOTARY PUBLIC, State of New York
No. 24-6413550
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

Roy G. Nelson
The name signed must be printed beneath

C 321—Affirmation of Service of Papers by Mail.
Affidavit of Service By Mail on Reverse Side.

Index No.

Plaintiff

against

Defendant

ATTORNEY'S AFFIRMATION OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is attorney(s) of record for

That on 19 deponent served the annexed

on
attorney(s) for
in this action at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated

.....
The name signed must be printed beneath

Attorney at Law